

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING ITO P. D. 61

CASE NO: HC-MD-CIV-MOT-GEN-2019/00410

In the matter between:

FAWZIA STELLEMACHER

APPLICANT

and

GOLDA ADELHEID STELLEMACHER

FIRST RESPONDENT

UTE STELLEMACHER

SECOND RESPONDENT

ZIA ENGELHILDE STELLEMACHER

THIRD RESPONDENT

MASTER OF THE HIGH COURT

FOURTH RESPONDENT

Neutral Citation *Stellemacher v Stellmacher* (HC-MD-CIV-MOT-GEN-2019/00410) [2020] NAHCMD 70 (27 February 2020)

CORAM: MASUKU J

Delivered: 27 February 2020

RULING

MASUKU J:

[1] This is an application that was brought to by the applicant in the first motion court roll, essentially seeking an order condoning her failure to file her answering affidavit within the time stipulated.

[2] The application is opposed by the respondents, who filed a notice in terms rule 66(1)(c) of the rules of court. Their main contention is that the applicant, in the affidavit seeking condonation, has not explained the entire period of delay and that she does not, at all, deal with the question of prospects of success.

[3] I have read the papers filed by the applicant, particularly the affidavit deposed to by Ms. Elize Angula, the applicant's legal practitioner of record. Whereas the explanation of the entire period of delay is not fully covered, I am prepared to grudgingly accept the explanation made for the delay.

[4] What is abundantly obvious though, from reading the entire affidavit, is that the applicant did not even make a modicum of effort to deal with the question of the prospects of success. All that she claims is that she has a right to be heard and that serious allegations involving theft of money are levelled against her. These do not, even by the longest stretch of imagination, deal or even attempt to deal with the question of prospects of success.

[5] In *Primedia Outdoor Namibia (Pty) Ltd v Tironen Natangwe Kauluma*¹ Van Niekerk J dealt with the requirements for condonation, albeit in the context of a labour appeal. She quoted generously from *Telecom Namibia Ltd v Nangolo*² regarding the requirements an applicant for condonation should satisfy. Because the only one of moment in this matter relates to prospects of success, I do not find it necessary to deal with the others.

[6] In dealing with prospects of success, the learned judge still quoting from *Nangolo*, said:

'7. The applicant for condonation must demonstrate good prospects of success on the merits. But where the non-compliance with the Rules of Court is flagrant and gross, prospects of success are not decisive.

...

¹ (LCA 95/2011) [2014] NALCMD 41 (17 October 2014).

² (LC 33/2009) Delivered on 28 May 2009.

9. If there are no prospects of success, there is no point in granting condonation’.

[7] In the instant case, the applicant has not made any allegations on oath regarding the question of prospects of success. This case is worse than one where the applicant makes allegations which the court finds carry trifling, if any weight. Where the issue is not addressed at all, there can only be one conclusion, that the application should not be granted condonation because the applicant has not shown that he or she has reasonable prospects of success.

[8] It would appear to me that that is the applicant’s lot in the instant case. A court cannot come to the assistance of a party that does not meet the basic requirements for the relief he or she seeks. In the premises the application for condonation is refused and there is no reason why the applicant should not be ordered to pay the costs of the application.

Order

[9] Having regard to what is stated above, the following order is accordingly granted:

1. The application for condonation of the late filing of the Applicant’s answering affidavit, is hereby refused.
2. The applicant is ordered to pay the costs of the application.
3. The matter is removed from the First Motion Court Roll and is referred to the Registrar for allocation to a Managing Judge.

T.S Masuku
Judge

APPEARANCE:

APPLICANT:

Instructed by:

RESPONDENT:

Instructed by: